



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
Larry D. Lisenbee

**SUBJECT:** Bingham McCutchen LLP  
Continuation Agreement and  
Related Appropriation Action

**DATE:** March 4, 2004

**COUNCIL DISTRICT:** 2  
**SNI AREA:** N/A

## **RECOMMENDATION**

It is recommended that the City Council take the following actions:

- a. Adoption of a resolution authorizing the City Attorney to negotiate and execute a continuation agreement with Bingham McCutchen LLP (formerly Doyle, Brown & Enerson, LLP) for litigation support services related to the development of the North Coyote Valley Industrial Campus Area, extending the term through March 31, 2004, and increasing compensation by \$152,272.46, to a total amount not to exceed \$652,272.46, with all funds paid by the developer.
- b. Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Excise Tax Fund:
  1. Increase the appropriation to the Department of Public Works for the Cisco: North Coyote Valley Improvements project in the amount of \$152,273.
  2. Increase the estimate for Earned Revenue by \$152,273.

## **BACKGROUND**

The City entered into an agreement with McCutchen, Doyle, Brown & Enersen, LLP to provide legal services related to the environmental impact report (EIR) for the proposed North Coyote Valley Research Park development project. These services included assistance in the litigation filed with respect to the EIR and zoning actions. This agreement has previously been amended to extend the term and to increase the amount of total compensation. As of July 1, 2002, the law firm changed its name to Bingham McCutchen LLP.

## **ANALYSIS**

The petitioners in the CEQA litigation over the EIR appealed the trial court's judgment against them to the Sixth District Court of Appeals. The additional billing from Bingham McCutchen was for the work performed on the appeal. At this time, all legal services provided under this agreement have been completed. The term of the agreement should be extended in order to make final payment to the law firm.

The City's cooperation agreement with developer Coyote Valley Research Park, LLC (CVRP) allows for the reimbursement to the City of these legal expenses related to the North Coyote development. The total amount of this agreement has been reimbursed by CVRP and an appropriation action for this final payment is recommended as part of this memorandum.

Therefore, we are requesting that the City Council authorize a continuation agreement with Bingham McCutchen LLP for legal services, extending the term through March 31, 2004, and increasing compensation by \$152,272.46 to a total amount not to exceed \$652,272.46.

## **PUBLIC OUTREACH**

N/A

## **COORDINATION**

This project has been coordinated with the Departments of Public Works and Transportation.

## **CEQA**

Not a project.

RICHARD DOYLE,  
City Attorney

LARRY D. LISENBEE,  
Budget Director

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I hereby certify that there will be available for appropriation in the Construction Excise Tax Fund in the Fiscal Year 2003-2004 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$152,273.

LARRY D. LISENBEE  
Budget Director